United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1055

Cases No. 1013: AL-JASSANI
No. 1017: AL-JASSANI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Ms. Marsha A. Echols; Ms. Brigitte Stern;

Whereas, on 14 March 2001, Abdul Razzaq Al-Jassani, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 April 2001, the Applicant after making the necessary corrections, filed an Application in which he requested, in accordance with article 12 (the former article 11) of the Statute of the Tribunal, the revision of Judgement No. 955 regarding the calculation of the Applicant's termination indemnity rendered by the Tribunal on 31 July 2000 (the "first case");

Whereas the pleas in the "first case" read, in part, as follows:

"II: PLEAS

I request the Tribunal to revise its Judgement No. 955 pursuant to article [12] of the Statute of the Tribunal in order to:-

1. [Award] payment of [an] additional 50 per cent of termination indemnity pursuant to staff regulation 9.3 (b), [the Tribunal's] precedents and the [abolition] of my post.

2. Award me ... appropriate and adequate compensation for material injuries as a direct consequence of UNDP actions ...

3. Award compensation for negligence on the part of the Tribunal in sending the Judgement in French language and the unreasonable delays [in] implementing ... Judgement No. 955.

4. [Award] costs."

Whereas, on 24 May 2001, the Applicant after making the necessary corrections, filed an Application in which he requested, in accordance with article 12 (the former article 11) of the Statute of the Tribunal, the revision of Judgement No. 956 regarding the Applicant's request for reimbursement of deductions from his salary, rendered by the Tribunal on 31 July 2000 (the "second case");

Whereas the pleas in the "second case" read, in part, as follows:

"II: PLEAS

I request the Tribunal to revise its Judgement No. 956 pursuant to article [12] of the Statute of the Tribunal in order to:-

1. Conclude that I had been treated differently from other [United Nations] and UNDP staff members ...

[2]. Rule that the 2 months salaries advanced to me in July 1993 [were] properly and legally processed ...

[3]. Order reimbursement of US$ 4732.80 which was deducted from my due bonus and supplement salary ..., plus an appropriate interest ...

[4]. Order ... appropriate and adequate compensation for lack of due process, procedural irregularities and moral injuries as a direct consequence of the management actions.

[5]. [Award] costs ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer in the "second case" until 31 October 2001 and in the "first case" until 31 January 2002;

Whereas the Respondent filed his Answer in the "second case" on 15 October 2001 and in the "first case" on 30 November 2001;

Whereas the Applicant filed Written Observations in the "second case" on 4 November 2001 and in the "first case" on 5 January 2002;

Whereas the facts in the "first case" were set forth in Judgement No. 955

Whereas the facts in the "second case" were set forth in Judgement No. 956.

Whereas the Applicant's principal contentions in the "first case" are:

1. The Tribunal based its Judgement on two precedents, copies of which the Applicant received only recently, one of which should be construed as favouring the Applicant's case.

2. The Tribunal erred in not recognizing the Applicant's entitlement to 50 percent additional termination indemnity due to the abolition of his post.

3. The Tribunal erred in determining that the Applicant was not subject to harassment.

Whereas the Respondent's principal contention in the "first case" is:

The Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 955 was rendered.

Whereas the Applicant's principal contentions in the "second case" are:

1. A confidential memorandum from the Resident Representative, a.i., in Iraq to the Chief, Compensation and Classification Section, Division of Personnel, the existence of which was unknown to the Applicant and to the Tribunal at the time Judgement No. 956 was rendered, constitutes a new fact of a decisive nature.

2. The Applicant suffered discrimination in the implementation of UNDP guidelines.

3. The Applicant's rights of due process were denied.

Whereas the Respondent's principal contention in the "second case" is:

The Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 956 was rendered.

The Tribunal, having deliberated from 27 June to 25 July 2002, now pronounces the following Judgement:

I. The Applicant seeks the revision of Judgements No. 955 and No. 956 of July 2000. His Applications are governed by article 12 of the Statute of the Tribunal. Having reviewed the two Applications, the Tribunal rejects them because the criteria of article 12 are not met in these cases.

II. As a preliminary matter, the Tribunal must address the Applicant's insistence that article 11, rather than article 12, of the Statute applies to his Applications for revision. He is correct, under the old numbering system for the Statute. When the General Assembly revised the Statute in resolution 55/159 of 12 December 2000, the number of the relevant article changed from article 11 to article 12.

III. Article 12, in pertinent part, permits an applicant to seek the revision of a judgement "on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence." The unwavering precedent of the Tribunal is to follow strictly the "rigorous conditions" of article 12. (See Judgement No. 556, *Coulibaly* (1992), para. I.) The burden is on the Applicant to convince the Tribunal, as outlined in article 12, that the Tribunal should undo a judgement that has *res judicata* effect.

IV. In these Applications for revision the alleged new fact of a decisive nature is distinct to each. In the "first case", which primarily concerned challenges to several calculations made by the Respondent, the alleged new facts are two Judgements cited as precedent by the Tribunal in Judgement No. 955. Obviously then, these facts were known to the Tribunal, making it impossible for the Applicant to fit his interpretation within the narrow confines of article 12.

In the "second case", in which the Applicant's claims of discriminatory treatment are important, the alleged new fact is a 2 June 1994 memorandum from the UNDP Resident Representative, *a.i.*, to the Chief, Compensation and Classification Section, Division of Personnel. The memorandum disputes certain claims made by the Applicant, responds to his claims that he was treated differently than certain other staff and distinguishes his case from

the cases he cited. The Applicant asserts that the memorandum, which was marked "Confidential", was sent to UNDP in New York and was included in his file without his comments, in contravention of ST/AI/292 of 15 July 1982, entitled "Filing of Adverse Material in Personnel Records". In his Observations the Applicant claims that the memorandum had not been seen by him or by the Tribunal.

The purportedly decisive nature of the claimed new fact, according to the Applicant, is that the memorandum was "full of illegal and false [j]ustification of the discriminatory action of the [A]dministration on the case in question." The Applicant does not carry his burden of explaining how, even if this were a new fact, it is decisive and could change the result of the Judgement. Before issuing its Judgements No. 955 and No. 956, the Tribunal considered the claims made by the Applicant that he was treated "differently" and that the procedures were inappropriate. The Applicant has always claimed that the actions of the Respondent were unwarranted. His arguments were unconvincing.

In Judgement No. 669, *Khan* (1994) the Tribunal considered a similar claim. There it found that the "new" memorandum, which also was not transmitted to that Applicant, was not a "decisive factor", because the information contained in it had been considered during proceedings to adjudicate the Applicant's claim. Thus the "new" memorandum could not have affected the outcome of the case. "The Applicant's defence was not impaired by the Applicant's ignorance of the memorandum".

V. Likewise, in the Application for the revision of Judgement No. 956 the information in the 2 June 1994 memorandum is neither new nor decisive. It is not new, because the gist of its contents was known. It is not decisive, since its contents - which were known - could not change the outcome of the dispute. The information in the memorandum is not "sufficiently important to have affected the Tribunal's decision". (Judgement No. 896, *Baccouche* (1998), para. I.) The failure of the Respondent to make the memorandum available to the Applicant in both cases presents a different claim and has "no bearing on the outcome of the case." (*Ibid.* para. V)

VI. The Applicant also claims that the Tribunal failed to consider certain evidence, in part because the Judgements of the Tribunal failed to refer specifically to the statements and other information he cites. While this claim and his claims concerning payments are inappropriate in an application for revision under article 12, the Tribunal notes that each Judgement refers to the pleas, facts and contentions of the parties, as well as the report and recommendations of

the JAB, before beginning with the words "having deliberated". In addition, the Tribunal reviews the full pleadings in the matters before it. The Tribunal notes its comment in the *Khan* revision case that the text of the Judgement clearly showed that all the points raised by the Applicant were duly disposed of. The same situation exits here, even if each point raised by the Applicant is not specifically mentioned.

VII. "No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation." (Judgement No. 894, *Mansour* (1998), para. II.) Yet the Applications in these cases are in reality a restatement of the claims asserted by the Applicant. No one should believe that a mere restatement of claims, even though made in new language and with changed emphasis, can be a basis for the revision of a Judgement made by the Tribunal. As stated in *Coulibaly*, a revision is not a means of reopening issues that have been settled definitively and which are thus *res judicata*. See also *Baccouche*, in which the Tribunal explained that an application for a revision must not be confused with an appeal, since the Tribunal's judgements are final and not subject to appeal.

VIII. Having considered the pleas, the contentions of the parties and all the record, the Tribunal dismisses the Applications in their entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Marsha ECHOLS
Member

Brigitte STERN
Member

Geneva, 25 July 2002

Maritza STRUYVENBERG
Executive Secretary